

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BYRON K. RED KETTLE,

Petitioner,

vs.

SCOTT FRAKES,

Respondent.

**8:13CV171**

**MEMORANDUM  
AND ORDER**

This matter is before the court on Petitioner's Motion for Recognizance ([Filing No. 128](#)) pending the court's decision of his Motion for Reconsideration ([Filing No. 126](#)). Because the court denied Petitioner's motion ([Filing No. 127](#)), Petitioner's Motion for Recognizance is denied.

Petitioner alleges that he is entitled to "custody grade promotions" because a South Dakota detainer on him was "invalidated following mandate in [*State v. Red Kettle*, 452 N.W.2d 774 (S.D. 1990)] without further action." ([Filing No. 128 at CM/ECF p. 2.](#)) The South Dakota Supreme Court reversed and remanded to the trial court for it to resentence Petitioner to concurrent state and federal sentences, rather than consecutive. *Red Kettle, supra* at 776-77. The court infers that Petitioner believes that the trial court did not follow the mandate on remand. However, any failure does not invalidate a current South Dakota state detainer on Petitioner. To the extent Petitioner seeks to challenge his South Dakota sentences, this is not the proper forum. *See, e.g., Breeze v. Trickey*, 824 F.2d 653 (8th Cir. 1987) (petitioner's attempt to challenge the validity of his Indiana sentence through petitions in Missouri courts did not serve to exhaust his state remedies).

IT IS THEREFORE ORDERED that: Petitioner's Motion for Recognizance ([Filing No. 128](#)) is denied.

Dated this 28th day of March, 2017.

BY THE COURT:

*s/ Richard G. Kopf*  
Senior United States District Judge